

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000526

04/01/2003

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

STATE OF ARIZONA

SAMUEL K LESLEY

v.

MANUEL GUEVARA GONZALEZ

JAMES P HERNANDEZ

PHX CITY MUNICIPAL COURT
REMAND DESK CR-CCC

MINUTE ENTRY

PHOENIX CITY COURT

Cit. No. #6092313

Charge: 1. D.U.I.
2. D.U.I. WITH A.C. .08% OR HIGHER
3. FAIL TO TURN HEADLIGHTS ON
4. FAIL TO PRODUCE EVIDENCE OF FINANCIAL RESPONSIBILITY

DOB: 07/27/71

DOC: 12/20/01

This Court has jurisdiction of this appeal pursuant to the Arizona Constitution Article VI, Section 16, and A.R.S. Section 12-124(A).

This case has been under advisement without oral argument and the Court has considered and reviewed the record of the proceedings from the Phoenix City Court, and the Memoranda submitted.

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Appellant alleges that the trial court erred in denying his Motion to Dismiss based upon an alleged illegal search and seizure of his automobile and person without probable cause. Appellant's trial counsel filed a Motion to Dismiss April 19, 2002. The trial court record reflects that that motion was scheduled for an evidentiary hearing on May 14, 2002. The trial court's log indicates that the Motion to Dismiss was denied; however, there is no tape, CD, or transcript of that proceeding provided to the Court in aid of this appeal. Appellee argues that Appellant had the burden of making a *prima facie* showing of the illegality of the stop pursuant to Rule 16.2(B), Arizona Rules of Criminal Procedure, and Appellant failed to call any witnesses. Appellee alleges that this is the reason why Appellant's Motion to Dismiss was denied. However, there is no record to support either parties' allegations. When the Appellant fails to request that a record be prepared or to order that record for appeal, this Court must presume, as a matter of law, that the missing portion of the record supports the decision of the trial judge.¹ Therefore, this Court must presume that the record supports the trial judge's denial of Appellant's Motion to Dismiss.

IT IS THEREFORE ORDERED affirming the judgments of guilt, findings of responsibility and sentences imposed by the Phoenix City Court.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

/s/ HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

¹ See, Baker v. Baker, 183 Ariz. 70, 900 P.2d 764 (1995); State v. Mendoza, 181 Ariz. 472, 891 P.2d 939 (1995).